



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF CAMPAIGN & POLITICAL FINANCE

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MICHAEL J. SULLIVAN
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May 24, 1995
AO-95-17

John Coleman Walsh, Esq.
130 Bowdoin Street, Suite 1004
Boston, MA 02108

Re: Legislative agent's involvement with political action committee

Dear Mr. Walsh:

This letter is in response to your April 5, 1995 request for an advisory opinion.

You have asked several questions concerning limitations imposed by recent amendments to the campaign finance law on a legislative agent and a political action committee (or "PAC"). See ch. 43 of the Acts of 1994. In particular, your questions relate to limitations imposed as a result of a legislative agent's serving as a treasurer of a PAC. I will address each of your questions separately.

Your questions relate primarily to Section 10A of M.G.L. c. 55, the campaign finance law. Section 10A is a new provision which regulates certain "contributions made through an intermediary or conduit," or so-called "bundled contributions." Section 10A was enacted into law to limit and regulate the bundling of large contributions by certain "regulated intermediaries." See AO-95-06 and M-95-05 (copies are enclosed).

By the express language of section 10A, regulated intermediaries include (1) **political action committees and their officers, employees or agents**, (2) **legislative agents**, executive agents (as of July 1, 1995), and lobbying organizations and their officers, employees or agents acting on behalf of the agent or organization, and (3) persons responsible for delivering "pooled" contributions from corporate employees or officers. See M.G.L. c. 55, s. 10A (b) (1) - (3).

The new bundling provisions do not limit or regulate all "bundled contributions" by regulated intermediaries. In fact, bundling is only regulated when three specific criteria are

met. First, one or more of the bundled contributions must be greater than \$100. Next, the contributions must be made to a candidate or a candidate's committee. Finally, the contributions must be made through a regulated intermediary.¹

Regulated intermediaries and bundled contributions to candidates are limited in two ways. First, the contributions are treated not only as contributions from the original source of the contribution but also as "contributions from the intermediary or conduit to the candidate, if the intermediary or conduit is [a regulated intermediary]" M.G.L. c. 55, s. 10A(b)(2). For example, if your two friends referenced in the previous paragraph each contribute \$150, and you personally brought a contribution of \$100, you would be treated - for purposes of determining whether you made an excess contribution - as having made a \$400 contribution. Since a legislative agent's individual contribution limit is only \$200, you would be deemed to have made an "excess contribution" in the amount of \$200. See M.G.L. c. 55, s. 7A(b).

Second, if contributions are made through a regulated intermediary, that regulated intermediary must "report in writing the original source and the intended recipient of such contribution along with other information required by [chapter 55] to the director [of OCPF] and to the [candidate]." See M.G.L. c. 55, s. 10A(e).

As defined by section 10A, the term "contributions made through an intermediary or conduit" **includes both** (i) contributions "**delivered**, whether in person or by mail, to a particular candidate or such candidate's authorized committee or agent" **and also** (ii) contributions made "in a manner that identifies in writing the person who **arranged** the making of the contributions" (Emphasis added). See M.G.L. c. 55, section 10A(c)(1)(i) and (c)(1)(ii).

¹ A contribution from your PAC which you bring to a candidate's fundraiser in your capacity as an officer of the PAC would not be considered to be made "through" you for purposes of the applying the bundling provisions. A contribution which you personally make and deliver at the fundraiser is similarly not made "through" an intermediary. Therefore, if you attend a candidate's fundraiser and bring your personal check, a check from your PAC, and a check from a friend for more than \$100 you are not regulated by the bundling provisions since only one of the three contributions (the contribution from your friend) would be deemed to be "made through a regulated intermediary." However, if you bring your personal check, a check from your PAC, and checks from two friends, at least one of which is for more than \$100, the contributions from your two friends are subject to the bundling provisions.

I will now answer your specific questions which I paraphrase below.

(1) As a legislative agent can I be the treasurer of a PAC?

Yes. As a legislative agent or as treasurer of a PAC you would be a regulated intermediary.

(2) Would the fact that I am the legislative agent for a group that has a PAC affect whether I can also be the treasurer of the PAC?

No. The fact that you are a legislative agent for a group that has a PAC has no impact on your serving as a treasurer of the PAC.

(3) If I can be the treasurer of a PAC, does my position as a legislative agent limit the amount that the PAC can contribute to an individual committee in the aggregate?

No. However, as discussed below, to the extent you "bundle" contributions for a candidate, the bundled contributions will count towards the PAC's limit.²

PACs may contribute up to \$500 during a calendar year to a candidate or a candidate's committee. See M.G.L. c. 55, s. 6. Your service as treasurer of a PAC, even if you are also a legislative agent, will not necessarily affect that limit. To the extent you are an intermediary or conduit of contributions, however, contributions which you gather and deliver to a candidate or candidate's committee will count towards your \$200 limit and the PAC's \$500 limit.

Therefore, if the PAC contributes \$500 during a calendar year to a particular candidate, you may not also bundle contributions, if any one of the bundled contributions is more than \$100, on behalf of the candidate. For example, you may not gather checks given by contributors and then deliver the contributions to the candidate. Nor may you arrange for a number of individuals to make contributions to the candidate and provide the candidate with a writing identifying yourself as the person responsible for arranging for the contributions, if any one of the contributions exceeds \$100.

To avoid application of the bundling provision (and also to avoid violating M.G.L. c. 55, s. 10, which prohibits the making of a contribution in a manner which disguises the true origin

² Bundled contributions would also count towards the limit applicable for legislative agents. As discussed below, legislative agents may contribute up to \$200 to a candidate (compared to \$500, the limit applicable to other individuals or PACs) to any candidate or candidate's committee during a calendar year.

of the contribution), PAC officers should ensure that contributions received by the PAC at its fundraising events are made payable to the PAC, not a particular candidate, and the contribution checks received by the PAC at its fundraiser are deposited in the PAC's account, and not directly endorsed to a particular candidate. In other words, contributions to the PAC cannot be "earmarked" for particular candidates.

(4) If I can be the treasurer of a PAC, does my position as a legislative agent limit in any way any personal contribution that I wish to make apart from the PAC?

Yes. As a legislative agent, you may contribute no more than \$200 to a candidate or candidate's committee during a calendar year. See M.G.L. c. 55, s. 7A(b). The limit does not change, however, if you also are a treasurer of a PAC.

Personal contributions from a regulated intermediary (whether PAC treasurer or legislative agent) are not subject to the bundling provisions of s. 10A since such contributions would be made by and not through the intermediary.

This opinion has been rendered solely on the basis of the representations in your letter and solely in the context of M.G.L. c. 55.

Please do not hesitate to contact this office should you have additional questions.

Sincerely,



Michael J. Sullivan
Director

MJS/cp
Enclosures